



## TEXAS DEPARTMENT OF INSURANCE

### Division of Workers' Compensation - Medical Fee Dispute Resolution (MS-48)

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## MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

### GENERAL INFORMATION

**Requestor Name**

SENTRIX PHARMACY AND DISCOUNT LLC

**Respondent Name**

ZURICH AMERICAN INSURANCE CO

**MFDR Tracking Number**

M4-16-3192-01

**Carrier's Austin Representative**

Box Number 19

**MFDR Date Received**

June 16, 2016

### REQUESTOR'S POSITION SUMMARY

**Requestor's Position Summary:** "Sentrix Pharmacy and Discount, LLC (the 'Pharmacy') requests payment for the services rendered to [injured employee] on 12/28/15. The service rendered was the filing and dispensing of prescription medication. The claim(s) in question were properly submitted pursuant to the Pharmaceutical Benefits rules codified in 28 Texas Administrative Code (TAC) §134.500 through §134.550.

The insurance carrier, Zurich failed to take final action on the claim within the 45-day period set forth in TAC §133.240. Specifically the claim was submitted and received by the provider on 1/7/16 (as verified by the attached proof of delivery) and no action was taken on the claim. Sentrix re-submitted the claim for reconsideration on 2/12/16 which was received by the carrier on 2/22/16 (as verified by the attached proof of delivery) and no action was taken on the claim."

**Amount in Dispute:** \$1,144.85

### RESPONDENT'S POSITION SUMMARY

**Respondent's Position Summary:** "It is controlling on the issue of whether the drugs in dispute needed preauthorization. The Texas Labor Code requires reimbursement for all medical expenses to be fair and reasonable and be designed to ensure the quality of medical care and to achieve effective medical cost control."

**Response Submitted by:** Flahive, Ogden & Latson

### SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
December 28, 2015	Pharmacy services – Compound 120 Grams	\$1,144.85	\$1,144.85

### FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and applicable rules of the Texas Department of Insurance, Division of Workers' Compensation.

## Background

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §133.240 sets out the procedure for medical bill processing by the workers' compensation insurance carrier.
3. 28 Texas Administrative Code §134.502 sets out the procedures for pharmaceutical benefits.
4. 28 Texas Administrative Code §134.503 sets out the fee guideline for pharmacy services.
5. Texas Labor Code §408.027 sets out provisions related to payment of health care providers.
6. No explanation of benefits were found in the submitted documentation.

## Issues

1. Did Zurich American Insurance Co reduce or deny the disputed services not later than the 45<sup>th</sup> day after receiving the medical bill?
2. Is the requestor entitled to additional reimbursement?

## Findings

This medical fee dispute was filed by health care provider Sentrix Pharmacy and Discount, LLC on June 16, 2016. Sentrix Pharmacy and Discount, LLC (Sentrix) on its table of disputed services asserts that it was not paid by Zurich for the compound it dispensed to a covered injured employee on December 28, 2015.

1. Sentrix contends that Zurich American Insurance Co ... "failed to take final action on the claim within the 45-day period set forth in TAC §133.240." Furthermore, in its reconsideration request, Sentrix also alleges that "Sentrix has not ... received any sort of notification or EOBR."

According to Texas Labor Code Sec. 408.027 (b), Zurich American Insurance Co was required to pay, reduce or deny the disputed services not later than the 45<sup>th</sup> day after it received the medical bill from Sentrix. Corresponding 28 Texas Administrative Code §133.240 (a) also required Zurich American Insurance Co to take **final action** by issuing an explanation of benefits not later than the statutorily-required 45<sup>th</sup> day. Final action is defined as:

Rule §133.2 (6) Final Action on a medical bill –

- (A) sending a payment that makes the total reimbursement for that bill a fair and reasonable reimbursement in accordance with §134.1 of this title (relating to Medical Reimbursement); and/or
- (B) denying a charge on the medical bill.

The following evidence supports Sentrix's written statement that the medical bill for the service in dispute was initially received by Zurich American Insurance Co, agent of Zurich on January 7, 2016.

- A copy of a certified mail receipt dated December 30, 2015 numbered 9414 8118 9956 3910 5219 47 addressed to Zurich, agent of Zurich American Insurance Co.
- A copy of a corresponding USPS tracking printout indicating that Zurich, agent of Zurich American Insurance Co received certified mail number 9414 8118 9956 3910 5219 47 on January 7, 2016 at the location listed on the certified mail receipt.

Although there is evidence to support that Zurich American Insurance Co received a medical bill for the service in dispute on January 7, 2016, Zurich American Insurance Co failed to timely take the following actions:

Rule §133.240 (a) An insurance carrier **shall take final action** [emphasis added] after conducting bill review on a complete medical bill...**not later than the 45<sup>th</sup> day** [emphasis added] after the insurance carrier received a complete medical bill.

Rule §133.240 (e) The insurance carrier **shall send the explanation of benefits** in accordance with the elements required by §133.500 and §133.501 of this title...The explanation of benefits shall be sent to:

- (1) the health care provider when the insurance carrier makes payment or denies payment on a medical bill...

Zurich American Insurance Co failure to timely issue an explanation of benefits to Sentrix Pharmacy creates a waiver of defenses that Flahive, Ogden & Latson raised in its response to medical fee dispute resolution under Rule §133.307 (d)(2)(F):

28 Texas Administrative Code §133.307 (d)(2)(F) The [carrier's] response shall address only those denial reasons presented to the requestor prior to the date the request for MFDR was filed with the division and the other party. Any new denial reasons or defenses raised shall not be considered in the review.

The Division notes that Flahive Ogden & Latson's (FOL) response to medical fee dispute resolution on behalf of Zurich American Insurance Co includes a statement that "the carrier asserts that it has paid according to applicable fee guidelines and challenges whether the disputed charges are consistent with the applicable fee guidelines."

The division notes that contrary to FOL's conclusory statement:

- no evidence was presented by FOL to the division to support that Zurich American Insurance Co took final action by paying reducing or denying the services in dispute within 45 days; and
- no evidence was presented to the division to support that Zurich American Insurance Co timely presented **any** defenses to Sentrix on an explanation of benefits as required under Rule §133.240.

All workers compensation insurance carriers are expected to fulfill their duty to take final action as required by the divisions Laws and adopted administrative rules. Zurich American Insurance Co failed to do so in this case.

The Division concludes that Zurich American Insurance Co failure to timely issue an appropriate explanation of benefits creates a waiver of any new defenses presented by Flahive, Ogden & Latson to the division at medical fee dispute. Absent any evidence to the contrary, the Division finds that the services in dispute are eligible for payment.

2. Rule at 28 Texas Administrative Code §134.503 applies to the compound in dispute and states, in pertinent part:

(c) The insurance carrier shall reimburse the health care provider or pharmacy processing agent for prescription drugs the lesser of:

- (1) the fee established by the following formulas based on the average wholesale price (AWP) as reported by a nationally recognized pharmaceutical price guide or other publication of pharmaceutical pricing data in effect on the day the prescription drug is dispensed:
  - (A) Generic drugs:  $((\text{AWP per unit}) \times (\text{number of units}) \times 1.25) + \$4.00$  dispensing fee per prescription = reimbursement amount;
  - (B) Brand name drugs:  $((\text{AWP per unit}) \times (\text{number of units}) \times 1.09) + \$4.00$  dispensing fee per prescription = reimbursement amount;
  - (C) When compounding, a single compounding fee of \$15 per prescription shall be added to the calculated total for either paragraph (1)(A) or (B) of this subsection; or
- (2) notwithstanding §133.20(e)(1) of this title (relating to Medical Bill Submission by Health Care Provider), the amount billed to the insurance carrier by the:
  - (A) health care provider; or
  - (B) pharmacy processing agent only if the health care provider has not previously billed the insurance carrier for the prescription drug and the pharmacy processing agent is billing on behalf of the health care provider.

The compound in dispute was billed by listing each drug included in the compound and calculating the charge for each drug separately as required by 28 Texas Administrative Code §134.502 (d)(2).

Each ingredient is listed below with its corresponding reimbursement amount as applicable.

Ingredient	NDC & Type	Price Gm	Total Gm	AWP Formula §134.503(c)(1)	Billed Amount §134.503(c)(2)	Lesser of (c)(1) and (c)(2)
Ketoprofen	38779007805 Generic	\$10.45	12	$(\$10.45 \times 12) \times 1.25 = \$156.75$	\$125.40	\$125.40
Amitriptyline	38779018908 Generic	\$18.24	2.4	$(\$18.24 \times 2.4) \times 1.25 = \$54.72$	\$43.77	\$43.77
Baclofen	38779038808 Generic	\$35.63	4.8	$(\$35.63 \times 4.8) \times 1.25 = \$213.78$	\$171.02	\$171.02
Amantadine	38779041109 Generic	\$24.225	9.6	$(\$24.225 \times 9.6) \times 1.25 = \$290.70$	\$232.56	\$232.56
Gabapentin	38779246108 Generic	\$59.85	6	$(\$59.85 \times 6) \times 1.25 = \$448.88$	\$359.10	\$359.10
Versatile Base Cream	51552134308 Generic	\$2.5	85.2	$(\$2.5 \times 85.2) \times 1.25 = \$266.25$	\$213.00	\$213.00
NA	NA	NA	NA	\$15.00 fee	\$0	\$0
			<b>Total</b>	<b>120</b>	<b>Total</b>	<b>\$1,144.85</b>

The total reimbursement is therefore \$1,144.85. This amount is recommended.

### **Conclusion**

The division's findings in this medical fee dispute relied upon the information and documentation submitted to medical fee dispute by the parties. Even though all the evidence was not discussed, it was considered.

For the reasons stated above, the division finds that the reimbursement is due. As a result, the amount ordered is \$1,144.85.

### ***ORDER***

Based on the submitted information, pursuant to Texas Labor Code Sec. 413.031 and 413.019 (if applicable), the division has determined that the requestor is entitled to additional reimbursement for the services in dispute. The division hereby ORDERS the respondent to remit to the requestor the amount of \$1,144.85, plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this Order.

### **Authorized Signature**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Medical Fee Dispute Resolution Officer

\_\_\_\_\_  
12/7/2016  
Date

### ***YOUR RIGHT TO APPEAL***

Either party to this medical fee dispute has a right to seek review of this decision in accordance with 28 Texas Administrative Code §133.307, 37 *Texas Register* 3833, applicable to disputes filed on or after June 1, 2012.

A party seeking review must submit a **Request to Schedule a Benefit Review Conference to Appeal a Medical Fee Dispute Decision** (form **DWC045M**) in accordance with the instructions on the form. The request must be received by the division within **twenty** days of your receipt of this decision. The request may be faxed, mailed or personally delivered to the division using the contact information listed on the form or to the field office handling the claim.

The party seeking review of the MFDR decision shall deliver a copy of the request to all other parties involved in the dispute at the same time the request is filed with the division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §141.1(d).

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**